

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

WP(C).No. 6122 of 2007(D)

**AGAINST THE ORDER IN EP 168/06 IN
OS.479/2001 of PRINCIPAL SUB COURT,ERNAKULAM**

PETITIONER: 2ND JUDGMENT DEBTOR:

**M.P.THIMMAPPA, S/O.PADMAYYA,
SURANJANA, OLD THEVARA ROAD,
35/2320, PERUMANOOR, ERNAKULAM.**

BY ADV. SRI.AYPE JOSEPH

RESPONDENT:DECREE HOLDER:

**KURILAND (P) LTD., UNITY BUILDING,
MANNADIAR LANE, THRISSUR-1,
REPRESENTED BY ITS MANAGING DIRECTOR.**

BY ADV. SRI.M.P.RAMNATH

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 06/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WPC.NO.6122/2007 D

APPENDIX

PETITIONER'S EXHIBITS:

**EXT.P1: COPY OF THE DECREE IN E.P.NO.168/2006 IN O.S.NO.479/2001
OF THE PRINCIPAL SUB COURT, ERNAKULAM.**

**EXT.P2: COPY OF THE OBJECTION DTD. 12/12/2006 IN E.P.168/06 IN
O.S.479/2001 OF THE PRL.SUB COURT, ERNAKULAM.**

/TRUE COPY/

P.A.TO JUDGE

Kss

M.N.KRISHNAN, J.

WP(C)No. 6122 OF 2007 D

Dated this the 6th August, 2007.

JUDGMENT

This writ petition is preferred against the order of the Principal Sub Court, Ernakulam directing issuance of warrant against the writ petitioner. The suit is one for realisation of the amount due under a decree. The grievance of the writ petitioner is that he has filed a counter to the effect that he is not having any sufficient means to pay the decree debt and he is not evading payment intentionally. According to him the court below has passed an order without permitting him to substantiate his contentions and without having proper evidence regarding means of the judgment debtor. There is some force in the said contention.

2. Heard learned counsel for the decree holder as well. Since it affects the right of a person before sending a person to jail the court has to necessarily satisfy its conscience regarding the means of the judgment debtor as well as his intention to evade payment. But no such order is seen passed and therefore the order under challenge is set aside and the matter is remitted back to the court below for fresh consideration regarding the means of the judgment debtor and also the intentional evadement

of payment. Needless to say that both parties are permitted to adduce both documentary and oral evidence in support of their respective contentions. The court below shall consider the matter as expeditiously as possible. Writ petition is disposed of accordingly.

M. N. KRISHNAN
Judge

jj